



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Phil Ford, Chief
Weights and Measures Division
Department of Agriculture
Austin, Texas

Dear Sir:

Opinion No. 0-5130
Re: Whether Article 1042b,
V. P. C., applies to
packages destined for
interstate or foreign
shipment.

Your request for advice is as follows:

"We are attaching, hereto, a copy of a letter under date of July 19 received from The Quaker Oats Company of Chicago, which is self-explanatory.

"We shall appreciate it very much if you will give us an official opinion along the lines indicated in the first paragraph of the letter mentioned above; that is, concerning the Texas Flour Package Law and the Texas Net Container Law and Regulations for their Enforcement insofar as either or both of the provisions of these statutes are applicable to export trade. We are assuming that export trade also covers any regulation pertaining to interstate trade. For your convenience, a copy of each of these statutes is also attached.

" "

We quote also from the letter you enclosed:

"We note that the language in the statutes which you were kind enough to send us a few days

ago covers 'packing for sale' as well as selling and offering for sale. Has an interpretation of the statute ever been made (or have any regulations been made pursuant to the statute) as to the effect of this phrase in connection with export trade?

" "

Sections 1, 2 and 3 of Article 1042b, Vernon's Penal Code, the applicable statute, read as follows:

"Section 1. The standard measures of wheat flour, whole wheat flour, graham flour, other cereal flour, and corn meal, except such cereals sold as grits, shall be packages containing net avoirdupois weights of two, five, ten, twenty-five, fifty, one hundred, one hundred fifty, and two hundred pounds.

"Sec. 2. It shall be unlawful for any person, firm, association, or corporation to pack for sale, sell or offer for sale in the State of Texas any wheat flour, whole wheat flour, graham flour, other cereal flour, or corn meal except in packages (including barrels, sacks, bags, cartons and other containers) of the above standard net weights.

"Sec. 3. Each package of wheat flour, whole wheat flour, graham flour, other cereal flour and corn meal shall have the net weight, name of manufacturer (meaning the person, firm, association, or corporation which processes the wheat or other cereal into flour, or which processes the corn into meal) and the name of the place where milled, printed or plainly marked on it in letters and figures clearly readable; and that it shall be unlawful for any wheat flour, whole wheat flour, graham flour, other cereal flour or corn meal, to be packed for sale, offered for sale or sold within the State of Texas unless it shall be so labeled. Provided, however, that reasonable rules and regulations for the efficient enforcement of this Act, not inconsistent herewith, and including reasonable variations or tolerances, shall be made by the Commissioner of Agriculture."

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The regulations you enclosed on this subject do not cover the specific question involved.

We are of the opinion that the term "pack for sale" as used in sections 2 and 3 of the statute, means to "pack for sale . . . in the State of Texas." This construction will avoid any interference with interstate and export trade where standard weights and measures in many instances are different from those fixed by this statute. We doubt if the Legislature intended to lay such a penalty upon our State's industry. The State clearly has power to adopt regulations of this character. *Weights and Measures, 68 O. J. 152, Sec. 2, et seq.*

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Elbert Hooper*
Elbert Hooper
Assistant

ER:db

OK
BW

APPROVED OCT 11, 1944
Charles Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

